



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
INTERTYPE CORPORATION)

Appearances:

For Appellant: H. A. Grube, its Treasurer

For Respondent: Chas. J. McColgan, Franchise Tax Commissione
B. D. Lack, Franchise Tax Counsel

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Intertype Corporation to his proposed assessment of an additional tax in the amount of \$324.89 based upon the return of income of the corporation for the year ended December 31, 1934.

The only question presented by the appeal, in view of the stipulation of the Commissioner that a loss, previously disallowe claimed with respect to certain **property is** proper and should be allowed as a deduction from gross income, is the amount allowable as a deduction for depreciation for the year 1934. In its return of income for that year the corporation claimed an allowance for depreciation in the amount of \$108,215 with respect to certain property owned by it on January 1, 1928. Of this amount, \$8,215 represented the amount of depreciation claimed with respect to that property for Federal income tax purposes for the year 1934 and the remaining \$100,000 was claimed upon the theory that the **basis** for determining depreciation for purposes of the state tax was the fair market value of the property as of January 1, 1928.

In view of the amendment in 1933 of the provisions of the Bank and Corporation Franchise Tax Act relating to the basis upon which depreciation is to be computed, the Act as amended being applicable in the computation of taxes accruing subsequent to December 31, 1932, the Commissioner disallowed the deduction of the additional \$100,000 claimed by the corporation upon the basis of value as of January 1, 1928. While the Commissioner was undoubtedly correct in disallowing the additional depreciation in the amount of \$100,000, we are of the opinion that the corporation is entitled to an allowance for depreciation for the year 1934 with respect to the property owned on January 1, 1928, in an amount in excess of \$8,215.

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The amount of depreciation claimed with respect to the property for Federal income tax purposes for the year 1934 does not reflect the actual allowable depreciation for the year for purposes of the state tax in view of excessive allowances taken for depreciation in Federal income tax returns for years prior to 1928. The Commissioner has not objected to the corporation's assertion that the property owned by it on January 1, 1928, had depreciated to the extent of 30% at that date and he has, in fact, accepted such an allowance for depreciation for years prior to 1928 in connection with the corporation's returns for years prior to 1934. It is believed, accordingly, that the depreciation allowance of 30% for years prior to 1928 should be accepted for purposes of the state tax irrespective of the extent of the depreciation allowed for those years for Federal income tax purposes.

The Bank and Corporation Franchise Tax Act authorized a deduction from gross income for depreciation in the returns of income for the years 1928 to 1931, inclusive, with respect to property acquired prior to January 1, 1928, upon the basis of the fair market value of the property as of that date and the corporation claimed a deduction for depreciation in the returns of income for those years upon that basis. Under the Act as amended in 1933, the only basis for computing deductions for depreciation in returns of income beginning with the year 1932 was that provided by Sections 113 and 114 of the Federal Revenue Act of 1932, which as to property acquired on or after March 1, 1913, is, in general, cost.

In computing depreciation allowances for the years 1932 and subsequent years with respect to property owned on January 1, 1928, the corporation, in our opinion, is not required to charge against the basis prescribed by the Act as amended in 1933 the entire amount of depreciation claimed and allowed for the years 1928 to 1931, inclusive, when computed upon the basis of the fair market value of the property as of January 1, 1928. The corporation is, in this case, required to charge against the basis prescribed by the Act as amended in 1933 only that portion of the depreciation claimed and allowed for the years 1928 to 1931, inclusive, assuming that the amount claimed and allowed was the entire amount allowable, that would have been claimed and allowed had that basis been prescribed by the Act during those years.

Depreciation in the total amount of \$556,161.09 was claimed and allowed to the corporation with respect to the property in question for the years 1928 to 1931, inclusive. This amount represents 33.6% of the basis, \$1,655,116.40 (replacement cost new as of January 1, 1928, \$2,364,452, less 30% depreciation to January 1, 1928), upon which depreciation was computed for those years. The application of this rate of depreciation to the basis prescribed by the Act as amended in 1933 less depreciation to January 1, 1928, \$1,307,248.65 (cost, \$1,867,498.07, less 3% depreciation to January 1, 1928), gives \$439,235.55 as the amount

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of depreciation to be charged against that basis for the years 1928 to 1931, inclusive.

Adding the depreciation occurring prior to January 1, 1928, \$560,249.42, the depreciation chargeable against the basis prescribed by the Act as amended in 1933 for the years 1928 to 1931, inclusive, \$439,235.55, and the depreciation claimed by the corporation for the years 1932 and 1933, \$185,942.17, gives a total depreciation with respect to the property owned on January 1, 1928, for years prior to 1934 of \$1,185,427.14. When this amount is deducted from the cost of the property, the basis prescribed by the Act for the year 1934, there is an unrecovered cost of \$682,070.93 chargeable over the remaining life of the property. It appearing from the evidence that the remaining life of the property after the year 1933 is about nine years, the corporation is, in our opinion, entitled to an allowance for depreciation in its return of income for the year 1934 in the amount of \$75,785.66.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissionersr, in overruling the protest of the Intertype Corporation to his proposed assessment of an additional tax in the amount of \$324.89, based upon the return of income of said corporation for the year ended December 31, 1934, be and the same is hereby modified. Said action is reversed, pursuant to the stipulation of the Commissioner, with respect to the disallowance of a loss claimed by the corporation with respect to certain property. Said action with respect to the disallowance of the deduction for depreciation to the extent of \$100,000 is sustained with respect to \$32,429.31 and reversed with respect to the remaining \$67,570.66 thereof to the end that depreciation shall be allowed to the corporation in its return of income for the year 1934 with respect to the property owned by it on January 1, 1928, including the depreciation in the amount of \$8,215 allowed by the Commissioner with respect to that property, in the amount of \$75,785.66. The Commissioner is hereby directed to proceed in conformity with this order and to send to the Intertype Corporation a notice of assessment revised in conformity therewith.

Done at Sacramento, California, this 15th day of December, 1937, by the State Board of Equalization.

R. E. Collins, Chairman
Jno. C. Corbett, Member
Ray Edgar, Member

ATTEST: Dixwell L. Pierce, Secretary